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CHUA ENG WEI & ANOR v. LIOW ENG KEONG & ANOR

COURT OF APPEAL, PUTRAJAYA
DAVID WONG DAK WAH JCA
ABANG ISKANDAR JCA
VERNON ONG LAM KIAT JCA

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[CIVIL APPEAL NO: M-02-1487-07-2013]
20 OCTOBER 2014

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LAND LAW: *Transfer – Validity of – Form 14A National Land Code – Transfer of ownership on account of natural love and affection – Whether parties stood in near relation to each other – Whether transfer of land in accordance with s. 26 Contracts Act 1950 – Whether instrument of transfer fit for registration – National Land Code, ss. 301 & 340(2)(b)*

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CONTRACT: *Consideration – Natural love and affection – Form 14A National Land Code – Agreement made without consideration – Transfer of ownership on account of natural love and affection – Whether parties stood in near relation to each other – Whether transfer of land in accordance with s. 26 Contracts Act 1950 – Whether instrument of transfer fit for registration – National Land Code, ss. 301 & 340(2)(b)*

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WORDS & PHRASES: *'near relation' – Contracts Act 1950, s. 26(a) – Meaning of – Agreement made without consideration – Transfer of land on account of natural love and affection – Validity of – Whether parties stood in near relation to each other – Whether instrument of transfer fit for registration*

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The appellants ('plaintiffs') were the registered co-owners of three pieces of land ('the lands'). Pursuant to the presentation of three Forms 14A at the Land Office, the first respondent ('first defendant') was registered as the new owner of the lands. The Forms 14A stated that the lands were transferred to the first defendant on account of natural love and affection. The plaintiffs, however, contended, *inter alia* that (i) they signed the said forms under the impression that they were loan documents in relation to a loan given by the second defendant to the first plaintiff's brother; (ii) they did not agree to transfer the lands to the first defendant on account of natural love and affection to contra the aforesaid loan; and (iii) the Forms 14A were void instruments since the plaintiffs and the first defendant and/or the second respondent ('second defendant') did not stand in a near relation to each other. On the contrary, the defendants submitted that the transfer of the lands was not rendered void for failure of consideration under s. 26(a) of the Contracts Act 1950 ('the Act') since the words 'kasih sayang' were inserted in the Forms 14A at the request of the plaintiffs. Dismissing the plaintiffs' claim, the High Court Judge found that the words 'kasih sayang' inserted in the Forms 14A did not make the said forms insufficient or void instrument under s. 340(2)(b) of the National Land Code ('NLC'). Hence, this appeal. The issue that arose for consideration was whether the Forms 14A were void pursuant to s. 26 of the Act.

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Held (allowing appeal)
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

(1) Section 26 of the Act renders an agreement made without consideration to be valid if it is made on account of natural love and affection between parties standing in a near relation to each other. The words 'near relatives' refer to those who are closely related such as one's parents, brothers or sisters. On the facts, the plaintiffs and defendants did not stand in a near relation to each other. Further, there was no evidence to show that the parties were related. (paras 10 & 14)

(2) Section 26(a) of the Act refers to an agreement in writing and registered under any law. Form 14A is a statutory form under the NLC relating to the dealing of land in Malaysia. On the facts, the Forms 14A must be a fit instrument for registration to enable the transfer of the lands in favour of the first defendant to be valid. Further, s. 301 of the NLC governs as to when an instrument is fit for registration. Since the parties did not stand in a near relationship with each other within the meaning of s. 26(a) of the Act, it follows that the transfer of the lands under the Forms 14A was contrary to s. 26. As such, the Forms 14A were not fit for registration under s. 301(c) of the NLC and were insufficient or void instruments. (paras 11, 12, 14, 15 & 16)

(3) Section 340 of the NLC provides certain circumstances under which a registered title or interest may be defeasible and thereby liable to be set aside. On the facts, the transfer of the ownership of the lands from the plaintiffs to the first defendant was liable to be set aside pursuant to s. 340(2)(b) and (3) of the NLC. (paras 18 & 19)

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu ('plaintif-plaintif') merupakan pemilik bersama tiga bidang tanah ('tanah-tanah itu'). Berikutan pengemukaan tiga Borang 14A di pejabat tanah, responden pertama ('defendan pertama') telah didaftarkan sebagai pemilik baru tanah-tanah itu. Borang 14A tersebut mencatitkan bahawa tanah-tanah itu dipindah milik kepada defendan pertama atas dasar kasih sayang. Plaintif-plaintif, walau bagaimanapun, menghujahkan, antara lain, bahawa (i) mereka menandatangani borang-borang tersebut atas anggapan bahawa ia merupakan dokumen-dokumen pinjaman berkaitan dengan pinjaman yang diberi oleh defendan kedua kepada abang plaintif pertama; (ii) mereka tidak bersetuju untuk memindah milik tanah-tanah itu kepada defendan pertama atas dasar kasih sayang semulajadi untuk kontra pinjaman tersebut; dan (iii) Borang 14A tersebut adalah instrumen yang tidak sah memandangkan plaintif-plaintif dan defendan pertama dan/atau responden kedua ('defendan kedua') tidak mempunyai kedekatan hubungan antara satu sama lain. Sebaliknya, defendan-defendan menghujahkan bahawa pindah milik tanah-tanah itu tidak terbatal kerana tiada balasan di bawah s. 26(a) Akta Kontrak 1950 ('Akta') memandangkan perkataan 'kasih sayang'

dinyatakan dalam Borang 14A atas permintaan plaintif-plaintif. Menolak tuntutan pihak plaintif, Hakim Mahkamah Tinggi mendapati bahawa perkataan 'kasih sayang' yang dinyatakan dalam Borang 14A tidak menjadikan borang-borang tersebut instrumen yang tidak mencukupi atau tidak sah di bawah s. 340(2)(b) Kanun Tanah Negara ('KTN'). Oleh itu, rayuan ini. Isu yang dibangkitkan untuk pertimbangan adalah sama ada Borang 14A tersebut tidak sah di bawah s. 26 Akta.

Diputuskan (membenarkan rayuan)
Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 26 Akta menyebabkan sesuatu perjanjian yang dibuat tanpa balasan sebagai sah jika ia dibuat atas dasar kasih sayang semulajadi antara pihak-pihak yang mempunyai kedekatan hubungan antara satu sama lain. Perkataan-perkataan 'saudara-mara rapat' merujuk kepada seseorang yang mempunyai hubungan seperti ibu bapa atau adik beradik. Berdasarkan fakta, plaintif-plaintif dan defendan-defendan tidak mempunyai kedekatan hubungan antara satu sama lain. Tiada keterangan yang menunjukkan bahawa pihak-pihak mempunyai pertalian.

(2) Seksyen 26(a) Akta merujuk kepada suatu perjanjian bertulis dan didaftarkan di bawah mana-mana undang-undang. Borang 14A merupakan borang statutori di bawah KTN berhubung dengan pengendalian tanah di Malaysia. Berdasarkan fakta, Borang 14A mestilah sesuai untuk pendaftaran bagi membolehkan pindah milik tanah kepada defendan pertama menjadi sah. Tambahan lagi, s. 301 KTN mengawal bila sesuatu instrumen sesuai untuk pendaftaran. Memandangkan pihak-pihak tidak mempunyai kedekatan hubungan antara satu sama lain dalam erti kata s. 26(a) Akta, maka pindah milik tanah-tanah dalam Borang 14A adalah bertentangan dengan s. 26. Oleh itu, Borang 14A tersebut tidak sesuai untuk pendaftaran di bawah s. 301(c) KTN dan merupakan instrumen yang tidak mencukupi atau tidak sah.

(3) Seksyen 340 KTN memperuntukkan keadaan-keadaan di mana hak milik berdaftar atau kepentingan boleh disangkal dan oleh itu, layak untuk diketepikan. Berdasarkan fakta, pindah milik tanah-tanah itu daripada plaintif-plaintif kepada defendan pertama layak diketepikan di bawah s. 340(2)(b) dan (3) KTN.

Case(s) referred to:
Re Tan Soh Sim, Deceased; Chan Lam Keong & 4 Ors v. Tan Saw Keow & 3 Ors [1951] 1 LNS 77 CA ***(refd)***
Subry Hamid v. Husaini Tan Sri Ikhwan & Anor [2006] 4 CLJ 50 CA ***(refd)***

Legislation referred to:
Contracts Act 1950, s. 26(a), (b)
National Land Code, ss. 301(c), 340(2)(b), (3)

For the appellants - Mogan Karupiah; M/s Mogan Karupiah
For the respondents - Chia Cheng Wee; M/s Chia & Lee

[Appeal from High Court, Melaka; Civil Suit No: 21-6-2008]

Reported by Kumitha Abd Majid

JUDGMENT

Vernon Ong Lam Kiat JCA:

[1] This appeal relates to a decision of the High Court given on 23 May 2013 dismissing the plaintiffs' claim to, *inter alia*, declare null and void the registration of transfers relating to three pieces of lands in favour of the first defendant.

[2] The appeal was heard on 20 October 2014. After hearing of submission of counsels of the parties and perusing the written submissions and records of appeal filed herein, we allowed the plaintiffs' appeal. We now give our reasons. For convenience, the parties shall be referred to as they were in the court below.

Introduction

[3] The first and second plaintiffs were the registered co-owner of three pieces of land (collectively called "the lands") all in the Mukim of Rumbia, District of Alor Gajah, Negeri Melaka and held under the following documents of title:

(i) GM 34, No. Lot 360 measuring 1.703 acres;

(ii) GM 38, No. Lot 358 measuring 1.770 acres; and

(iii) GM39, No. Lot 359 measuring 1.478 acres.

[4] Pursuant to the presentation of three Forms 14A (collectively called "the Forms 14A") on 10 August 2005 at the Pejabat Daerah dan Tanah Alor Gajah, the first defendant was registered as the new owner of the lands.

[5] According to the Forms 14A, the lands were transferred by the plaintiff to the first defendant on account of natural love and affection ("kasih sayang").

Plaintiffs' Submission

[6] In brief, the plaintiffs' claim is premised on the following grounds:

(i) the plaintiffs signed the Forms 14A under the impression that they were loan documents in connection with a loan of RM158,903.46 given by the second defendant to the first plaintiff's brother (one Chua Eng Kiat) to settle the outstanding sum owing by a business known as Sin Hock Heng to United Merchant Finance Bhd;

(ii) the plaintiffs did not agree to transfer the lands to the first defendant on account of natural love and affection to contra the aforesaid loan;

(iii) the plaintiffs did not have any business relationship with the first and/or second defendants and deny being indebted to the defendants on account of alleged goods sold and delivered to the plaintiffs; and

(iv) the Forms 14A are void instruments as the plaintiffs and the first defendant and/or the second defendant do not stand in a near relation to each other.

[7] At the hearing of the appeal before us, learned counsel for the plaintiffs confined his submission to one main issue. It is this. The transfer of the lands to the first defendant is void because it was made without consideration. Learned counsel submitted that even though the transfer was stated to be on account of natural love and affection between the parties, there is no blood or near relationship between the plaintiffs and the first defendant (s. 26(a) of the Contracts Act 1950; In *Re Tan Soh Sim, Deceased; Chan Lam Keong & 4 Ors v. Tan Saw Keow & 3 Ors* [1951] 1 LNS 77; [1951] 17 MLJ 21 CA; *Subry Hamid v. Husaini Tan Sri Ikhwan & Anor* [2006] 4 CLJ 50; [2006] 6 MLJ 229 CA).

Defendants' Reply

[8] Learned counsel for the defendants argued that the learned trial judge found that there was consideration. The learned trial judge found that the consideration was the contra of the debt owed by the first plaintiff's brother to the second defendant. The transfer of the lands is not rendered void for failure of consideration under s. 26(a) of the Contracts Act 1950 as the words "kasih sayang" were inserted on the Forms 14A at the request of the plaintiffs. Further, the learned trial judge also found that the words "kasih sayang" inserted in the Forms 14A did not make the Forms 14A an insufficient or void instrument under s. 340(2)(b) of the National Land Code (NLC).

[9] Accordingly, learned counsel for the defendants argued that the situation fell under s. 26(b) of the Contracts Act 1950. Section 26 reads as follows:

> 26. An agreement made without consideration is void unless:
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> it is in writing and registered
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> (a) it is expressed in writing and registered under the law (if any) for the time being in force for the registration of such documents, and is made on account of natural love and affection between parties standing in a near relation to each other;
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> or is a promise to compensate for something done
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> (b) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do;

or is a promise to pay a debt barred by limitation law

(c) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law of limitation of suits.

In any of these cases, such an agreement is a contract.

Decision Of The Court

[10] In this instance, it is not disputed that the transfer of the lands were registered under the Forms 14A. It is also not disputed that according to the Forms 14A, the transfers were made on account of natural love and affection between the plaintiffs and the first defendant.

[11] The main issue for determination turns on the question of whether the Forms 14A are void pursuant to s. 26 of the Contracts Act 1950.

[12] Briefly, s. 26 of the Contracts Act 1950 renders an agreement made without consideration to be valid if it is made on account of natural love and affection between parties standing in a rear relation to each other. The word "relation" is defined as a member of one's family (*Cambridge Advanced Learner's Dictionary* 2nd edn). A similar meaning is ascribed to the word "relative". The words "near relatives" refer to those who are closely related such as one's parents, brothers or sisters. The fact that the plaintiffs and the first defendant do not stand in a near relation to each other is not in dispute.

[13] It is pertinent to pause and note that para. (a) of s. 26 also refers to an agreement in writing and registered under any law. Therefore, there are two factors which must be taken into consideration. In this case, the Form 14A is a statutory form under the NLC relating to the dealing of land in Malaysia. In order for the transfer of the lands to be valid, the instrument of transfer must be fit for registration. In other words, the Forms 14A must be a fit instrument for registration in order for the transfer of the lands in favour of the first defendant to be valid.

[14] Whether or not an instrument is fit for registration is strictly governed by s. 301 of the NLC which is as follows:

301. When an instrument is fit for registration.

An instrument shall be fit for registration under this Part if, but only if, the following conditions are satisfied -

(a) that it is one of the classes of instrument set out in sub-section (1) of section 292 as authorized to be so registered;

(b) that it complies with -

(i) the provisions of Part Thirteen as to the form, content, execution and attestation of instruments of dealing generally, and the persons and bodies capable of taking thereunder, and

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(ii) the provisions of Part Fourteen to Seventeen with respect to instruments of the particular class in question;

(c) that the dealing which it effects is not contrary to any prohibition or limitation imposed by this Act or any other written law for the time being in force, or to any restriction in interest to which the land in question is for the time being subject;

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(d) that it does not declare, or except as permitted by section 344, disclose the existence of any trust; and

(e) that it is duly stamped in accordance with the provisions of the Stamp Act, 1949;

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Provided that where a certificate of sale has been given to a purchaser in respect of any charged land or lease under sub-section (3) of section 259 or sub-section (4) of section 256, any requirement to obtain the consent of the State Authority relating to the restriction in interest to such land or lease in question shall not be applicable.

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[15] On the facts of this case, it is patently clear that according to the Forms 14A, the transfer is not for monetary consideration. Instead it is stated that the transfer is on account of natural love and affection.

[16] It is not a disputed fact that the plaintiffs and the defendants do not stand in a near relationship to each another. In fact, there is no evidence to

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show that the parties are even related at all. In the background of this particular fact, it follows that the exception under para. (a) of s. 26 of the Contracts Act 1950 does not apply to the transfer of the lands. Put another way, the defendants cannot avail themselves of the benefit of .s 26(a) of the Contracts Act 1950 because they are not near relations.

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[17] Since the parties do not stand in a near relationship with each other within the meaning of s. 26(a) of the Contracts Act 1950, it must also follow that the transfer of the lands under the Forms 14A is contrary to s. 26 of the Contracts Act 1950. Consequently, the Forms 14A being instruments of transfer prescribed under the NLC are not fit for registration under para. (c)

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of s. 301 of the NLC for being contrary to s. 26 of the Contracts Act 1950.

[18] As the Forms 14A are instruments which are not fit for registration, the Forms 14A are incapable of registration on the basis that they are insufficient or void instruments.

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[19] What then are the implications, if any, affecting the first defendant's title in the lands.

[20] It is settled law that the indefeasibility of title or interest under the NLC is not immediate. Section 340 of the NLC provides certain circumstances under which a registered title or interest may be defeasible and

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thereby liable to be set aside. Section 340 of the NLC reads as follows:

340. Registration to confer indefeasible title or interest, except in certain circumstances.

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible:

a) In any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

b) Where registration was obtained by forgery, or by means of an insufficient or void instrument; or

c) Where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2)-

a) It shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

b) Any interest subsequently granted thereout shall be liable to be set aside in the hands of an person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent-

a) The exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

b) The determination of any title or interest by operation of law.

(Emphasis added)

[21] Accordingly, the resultant transfer of the ownership of the lands from the plaintiffs to the first defendant under the Forms 14A is liable to be set aside pursuant to sub-ss. (2)(b) and (3) of s. 340 NLC.

[22] For the foregoing reasons, we do not agree with the findings of the learned trial judge. The purported transfer of the lands under the Forms 14A is null and void for illegality and must be set aside. In consequence, the plaintiff's appeal is allowed. Save and except for the order dismissing the defendants' counterclaim, the order of the High Court is set aside. Judgment is entered for the plaintiffs in prayers 1, 2, 5, 6, 7, 8, 9, 12 and 13 of the statement of claim.